

Message Text

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ACTION ARA-17

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FM AMEMBASSY BRASILIA

TO SECSTATE WASHDC 8314

INFO AMCONSUL RECIFE

AMCONSUL RIO DE JANEIRO

AMCONSUL SAO PAULO

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E. O. 11652: N/ A

TAGS: PGOV PINT BR

SUBJECT: SURPRISING COURT DECISION FORCES MEDICI TO
PUBLICLY DECREE PRIOR CENSORSHIP OF THE PRESS

REF: RIO' S A-123

1. IN A SURPRISING MOVE, ON JUNE 19 THE FEDERAL APPEALS COURT (TRIBUNAL FEDERAL DE RECURSOS) VOTED 6 TO 5 TO GRANT AN INJUNCTION IN FAVOR OF THE WEEKLY NEWSPAPER OPINIAO PROHIBITING THE FEDERAL POLICE FROM EXERCISING PRIOR CENSORSHIP OF THE JOURNAL. THE COURT REFUSED TO RULE ON THE CONSTITUTIONALITY OF THE DECREE LAW (1.077) WHICH THE GOVERNMENT CLAIMED TO BE THE BASIS FOR THE CENSORSHIP. INSTEAD IT BASED ITS DECISION ON THE LACK OF PROOF THAT THE PRESIDENT HAD EVER DECREED PRIOR CENSORSHIP AS REQUIRED BY INSTITUTIONAL ACT NO. 5. TWO OF THE SIX JUDGES WHO VOTED IN FAVOR OF OPINIAO NORMALLY VOTE WITH THE GOVERNMENT.

2. IN RESPONSE TO THE COURT DECISION, ON JUNE 20 PRESIDENT MEDICI SIGNED AN ORDER BASED ON ARTICLE 9 OF IA-5 AUTHORIZING
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THE JUSTICE MINISTRY THROUGH THE FEDERAL POLICE TO INSTITUTE PRIOR CENSORSHIP OF OPINIAO. HE ALSO RECONFIREMD A PREVIOUS ORDER OF MARCH 30, 1971 WHICH ESTABLISHED PRIOR CENSORSHIP UNDER THE AUTHORITY OF IA-5. THIS ORDER OF MARCH 30, 1971 APPARENTLY HAS NEVER BEEN PUBLISHED.

3. THE GOVERNMENT PLANS TO APPEAL THE OPINIAO DECISION TO THE SUPREME COURT. MEDICI' S ORDER OF JUNE 20, 1973 RECONFIRMING THE EARLIER ORDER MAY BE CITED BY THE GOVERNMENT AS PROOF THAT THE PRESIDENT HAD ORDERED THE CENSORSHIP TO WHICH OPINIAO WAS SUBJECTED, THUS PROVIDING THE BASIS FOR OVERTURNING THE APPEALS COURT DECISION.

4. COMMENT: OPINIAO, ALTHOUGH WINNING ITS CASE IN THE COURT OF APPEALS, IS STILL SUBJECT TO PRIOR CENSORSHIP. BUT THIS CASE HAS FORCED THE GOVERNMENT TO DO WHAT IT HAS AVOIDED ASSIDUOUSLY IN THE PAST, ACKNOWLEDGING OFFICIALLY THAT CENSORSHIP OF THE PRESS IS PRACTICED IN BRAZIL.

5. ALTHOUGH OPINIAO IS THE ONLY PUBLICATION WHICH HAS BEEN PUBLICLY DECREED SUBJECT TO PRIOR CENSORSHIP, OBSERVERS DO NOT EXPECT OTHER VICITIMS OF THE CENSOR TO CHALLENGE THE GOVERNMENT IN COURT. NO ONE KNOWS EXACTLY WHAT THE ORDER OF MARCH 30, 1971 SAYS BUT MOST BELIEVE THAT THE CENSORSHIP IT AUTHORIZES HAS GENERAL APPLICATION TO THE PRESS IN BRAZIL.
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